IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.5482 OF 2005

Shri. Jagannath Amruta Ghorpade
and Others ...Applicants
Vs.
The State of Maharashtra & Anr. ...Respondents

Shri. S.R.Chitnis, Sr.Advocate with Shri. M.S.Mohite for the Applicants.
Ms Rajeshree Gadhvi, A.P.P. for the State.
Shri. S.P.Kadam for the intervener.

CORAM : A. S. OKA, J.
DATE : SEPTEMBER 21, 2005.

P.C.:

1. Rule. The learned A.P.P. waives service. Taken up for hearing forthwith.

2. The Applicants are the original accused. On 21st March, 2005, an Application was made on behalf of the Applicants for recalling the prosecution witness Nos.4 and 5 for the purposes of the cross-examination. The learned Trial Judge allowed the said Application and the witnesses were recalled. The witnesses were directed to remain present on 20th April, 2005. On 20th April, 2005, it was stated that the Advocate appearing for the Applicants was sick and therefore, the cross-examination was adjourned to 18th May, 2005. On 18th May, 2005, the Advocate for the Applicants did not remain present and therefore, an Application for adjournment was moved. The said Application at Exhibit 153 was rejected by the learned Trial Judge. On the next date, an Application was moved at Exhibit

157 praying for recalling P.W.Nos.4 and 5. By the order impugned in this Petition, the learned Judge rejected the Application at Exhibit 157. The learned Judge observed that there is a direction issued by this Court to conclude the trial on or before 30th November, 2005 and therefore, further opportunity cannot be given to the Applicants by once again recalling the said two prosecution witnesses.

3. The learned Counsel appearing for the Applicants submitted that the cross-examination of P.W.Nos.4 and 5 could not be conducted as on two consecutive dates the Advocate appearing for the Applicants in the Trial Court was not available. He submitted that one more opportunity be given to the Applicants by recalling the said witnesses. On instructions of the Applicants he states that on the date fixed by this Court, the Advocate for the Applicants will remain present in the Court and will cross-examine witnesses on the same day. He stated that the Applicants will not ask for adjournment on the next date. The learned A.P.P. has opposed the prayer made by the Applicants. The learned Counsel appearing on behalf of the original complainant invited my attention to the order dated 22nd June, 2005 passed by this Court in Criminal Application No.3779 of 2005. He pointed out that the learned Trial Judge has been directed to decide the said case

on or before 30th November, 2005 and therefore, the learned Judge was justified in rejecting the Application.

4. I have considered the submissions. Even after the learned Judge permitted recall of the two witnesses by the order dated 21st March, 2005, the cross examination could not proceed due to non-availability of the Advocate appearing for the Applicants.

5. As the case is made time bound by this Court, there is some justification for the learned Judge to reject the Application at Exhit 157. However, it is to be borne in mind that in the process, the Applicants who are the accused have suffered only because their Advocate was not available. In my view, one more opportunity deserves to be granted to the Applicants to cross-examine the said two witnesses. Shri. Kadam appearing for the original complainant stated that next date fixed in the Trial Court is 04th October, 2005 and on that day P.W.Nos.4 and 5 will remain present. In my view, costs will have ordered to be paid to P.W.Nos.4 and 5.

5. Hence, I pass the following order:

: O R D E R :

i) The impugned order dated 08th August, 2005 passed by the learned Trial Judge is set aside.

ii) The Application made by the Applicants at Exhibit 157 is allowed and prosecution witness No.4 Shri. Chandrakant Ghorpade and prosecution witness No.5 Shri. Shivaji Jadhav are recalled for cross-examination by the Advocate for the Applicants. Necessary witness summons be issued to the said witnesses returnable on 04th October, 2005 subject to the Applicants depositing in the Trial Court a sum of Rs.2,000/- by way of costs payable to said witnesses within a period of one week from today.

iii) It is made clear that the Advocate for the Applicants will cross-examine both the witnesses on the same day i.e. on 04th October, 2005 and the Applicants will not be entitled to seek adjournment on any ground. If the said witnesses appear on the next date, they will be entitled to withdraw sum of Rs.1000/- each by way of costs.

iv) Rule is made partly absolute in above terms.

v) Parties and the concerned Court to act upon the authenticated copy of this order.

JUDGE